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CH. 5 INDIRECT EVIDENCE, INFERENCES AND PRESUMPTIONS

**CHAPTER 5**  
**INDIRECT EVIDENCE, INFERENCES AND PRESUMPTIONS**

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**§ 5101. Indirect Evidence Classified.** [Omitted]

SOURCE: CCP § 1957. Substance Duplicated in § 2110 of this Division.

**§ 5102. Inference Defined.**

An inference is a deduction which the reason of the judge or jury makes from the facts proved, without an express direction of law to that effect.

SOURCE: CCP § 1958, modified to reflect juries.

**§ 5103. Presumption Defined.**

A presumption is a deduction which the law expressly directs to be made from particular facts.

SOURCE: CCP § 1959.

COMMENT: The presumptions of this Chapter are not those mentioned in GRE 301. The presumptions here are those which arise upon specific direction of law.

**§ 5104. When an Inference Arises.**

An inference must be founded both on a fact legally proved and on such a deduction from that fact as is warranted by a consideration of the usual propensities or passions of men, the particular propensities or passions of the person whose act is in question, the course of business, or the course of nature.

SOURCE: CCP § 1960, modified grammatically only.

**§ 5105. When Presumptions May be Controverted.**

A presumption, unless declared by law to be conclusive, may be controverted by other evidence, direct or indirect, but unless so con-

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troverted, the judges and juries are bound to find according to the presumption in all civil cases.

**SOURCE:** CCP § 1961, as modified.

**CROSS-REFERENCES:** GRE 301.

**COMMENT:** Modification conforms to 301 which applies only to civil actions. For the basic presumptions governing the Criminal Code see Chapter 1 of Title 9 of this Code (Crimes and Corrections).

**§ 5106. Specification of Conclusive Presumptions.**

The following presumptions, and no others, are deemed conclusive:

1. A malicious and guilty intent, from the deliberate commission of an unlawful act, for the purpose of injuring another;

2. The truth of the facts recited, from the recital in a written instrument between the parties thereto, or their successors in interest by a subsequent title but this rule does not apply to the recital of a consideration;

3. Whenever a party has, by his own declaration, act or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission be permitted to falsify it;

4. A tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation;

5. The issue of a wife cohabiting with her husband who is not impotent, is indisputably presumed to be legitimate;

6. The judgement or order of a court, when declared by this Code to be conclusive; but such judgment or order must be alleged in the pleadings if there be an opportunity to do so; if there be no such opportunity, the judgment or order may be used as evidence;

7. Any other presumption which, by law, expressly made conclusive.

**SOURCE:** CCP § 1962.

**COMMENT:** See *Atkins Kroll, Ltd. v Cabrera*, (1961) 295 F.2d 21.

**§ 5107. All Other Presumptions May be Controverted.**

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All other presumptions are satisfactory if uncontradicted. They are denominated disputable presumptions, and may be controverted by other evidence. The following are of that kind:

1. That a person is innocent of a crime or wrong;
2. That an unlawful act was done with an unlawful intent;
3. That a person intends the ordinary consequence of his voluntary act;
4. That a person takes ordinary care of his own concern;
5. That evidence willfully suppressed would be adverse if produced;
6. That higher evidence would be adverse from inferior being produced;
7. That money paid by one to another was due to the latter;
8. That a thing delivered by one to another belonged to the latter;
9. That an obligation delivered up to the debtor has been paid;
10. That former rent or installments have been paid when a receipt for the latter is produced;
11. That things which a person possesses are owned by him;
12. That a person is the owner of property from exercising acts of ownership over it, or from common reputation of his ownership;
13. That a person in possession of an order on himself for the payment of money, or the delivery of a thing, has paid the money or delivered the thing accordingly;
14. That a person acting in a public office was regularly appointed to it;
15. That official duty has been regularly performed;
16. That a court or judge, acting as such, whether in Guam or any state or country, was acting in the lawful exercise of his jurisdiction;
17. That a judicial record, when not conclusive, does still correctly determine or set forth rights of the parties;

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18. That all matters within an issue were laid before the judges and passed upon by them;
19. That private transactions have been fair and regular;
20. That the ordinary course of business has been followed;
21. That a promissory note or bill of exchange was given or endorsed for a sufficient consideration;
22. That an endorsement of a negotiable promissory note or bill of exchange was made at the time and place of making the note or bill;
23. That a writing is truly dated;
24. That a letter duly directed and mailed was received in the regular course of the mail;
25. Identify of person from identity of name;
26. That a person not heard from in seven (7) years is dead;
27. That acquiescence followed from a belief that the thing acquiesced in was conformable to the right or fact;
28. That things have happened according to the ordinary course of nature and the ordinary habits of life;
29. That persons acting as co-partners have entered into a contract of co-partnership;
30. That a man and woman deporting themselves as husband and wife have entered into lawful contract of marriage;
31. That a child born in lawful wedlock, there being no divorce from bed and board, is legitimate;
32. That a thing once proved to exist continues as long as is usual with things of that nature;
33. That the law has been obeyed;
34. That a document or writing more than thirty (30) years old is genuine when the same has been since generally acted upon as genuine, by persons having an interest in the question, and its custody has been satisfactorily;

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35. That a printed and published book, purporting to be printed or published by public authority, was so printed or published;
36. That a printed and published book, purporting to contain reports of cases adjudged in the tribunals of the state, territory, possession, commonwealth or trust territory or country where the book is published contains correct reports of such cases;
37. That a trustee or other person, whose duty it was to convey real property to a particular person, has actually conveyed to him, when such presumption is necessary to perfect the title of such person or his successor in interest;
38. The uninterrupted use by the public of land for a burial ground, for five (5) years, with the consent of the owner, and without a reservation of his rights, is presumptive evidence of his intention to dedicate it to the public for that purpose;
39. That there was a good and sufficient consideration for a written contract.
40. That a minor, possessing or using a firearm does so with the knowledge of its lawful owner or putative owner.
41. That a minor possessing or using a firearm does so with the knowledge of his parents or guardians

**SOURCE:** CCP § 1963, modified only to reflect territories, possessions, etc., in Item 36. Items 40 and 41 added by P.L. 20-223:12.

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